



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D C. 20224

TE/GE EO EXAMINATIONS  
1100 COMMERCE ST. MAIL STOP 4920 DAL  
DALLAS, TEXAS 75242

509-02.00

April 26, 2013

Release Number: 201335018

Release Date: 8/30/2013

LEGEND

Org - Organization name

XX - Date Address - address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Contact Numbers:

ORG

ADDRESS

**CERTIFIED MAIL**

Dear :

This is a final determination regarding your foundation classification. This letter modifies our letter to you dated March 27, 20XX, in which we determined that you were an organization described in section 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (Code).

Based on your sources of support, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(2) of the Code effective January 1, 20XX. Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected.

The modification of your foundation status was made for the following reasons:

The regulations under section 170 provide that an organization will be described in section 170(b)(1)(A)(vi) if it normally receives at least 33 1/3 percent of its support from governmental units or from the general public. See section 1.170A-9(f). Because your primary source of support is from day care fees, your organization is not considered a publicly supported organization under Code sections 509(a)(1) and 170(b)(1)(A)(vi). However, effective for all tax years beginning with the tax year ending December 31, 20XX, you are considered a publicly supported organization under Code section 509(a)(2) which includes organizations that normally receive more than one-third of their support from a combination of gifts, grants, contributions, membership fees, and gross receipts from performing exempt function activities and not more than one-third of their support from investment income and unrelated business taxable income.

Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

Processing of tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing  
Director, EO Examinations

Enclosure:

Signed Form 6018

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service  
TEGE EO Examinations  
1100 Commerce Street  
Dallas, TX 75242

October 18, 2012

ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we propose modifying your private foundation status under section 509(a) of the Internal Revenue Code (Code).

Your exempt status under section 501(c)(3) of the Code is still in effect.

If you accept our findings, take no further action. We will issue a final letter modifying your private foundation status.

If you do not agree with our proposed modification of private foundation status, you may provide additional information that you would like to have considered, or you may submit a written appeal. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference with Appeals, you must submit a written protest within 30 days from the date of this letter. An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 3498  
Publication 892  
Report of Examination

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit 1
Name of taxpayer ORG	Tax Identification number EIN	Year/period ended December 31, 20XX

LEGEND

ORG - Organization name      EIN - ein      XX - Date      State - state      CO-1

**ISSUE**

Whether ORG's (ORG) foundation status should be reclassified from an organization described in Internal Revenue Code (IRC) sections 509(a)(1) and 170(b)(1)(A)(vi) to an organization described in IRC section 509(a)(2).

**FACTS**

ORG was incorporated in the State of State on February 15, 20XX. In our letter dated March 27, 20XX, ORG began operating under an advance ruling as an organization exempt under section 501(c)(3) and was classified as not a private foundation within the meaning of section 509(a)(1) and 170(b)(1)(A)(vi). The advance ruling period ended December 31, 20XX.

According to the original Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the IRC, ORG is organized to run the summer food program in which they serve the participating children breakfast and lunch. The CO-1 (CO-1) was created to serve nutritious meals to children when National School Lunch and School Breakfast Program meals are not available. To ensure all children receive proper nutrition throughout the year, CO-1 reimburses organizations that prepare and serve meals to eligible children during the summer and school vacation periods. On top of providing CO-1 during the summer time, organization also operates a daycare facility for low-income family.

Revenue received for the three year period that ended December 31, 20XX was from the following categories:

Revenue	20XX	20XX	20XX	20XX	20XX	Total
Program Service: Daycare Fees						
Total Revenue						

**IRC Sections 509(a)(1) and 170(b)(1)(A)(vi) Test:**

Total exempt function income: \$

Percent of Public Support for § 509(a)(1) %

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Name of taxpayer ORG	Tax Identification number EIN	Year/period ended December 31, 20XX

Based on a computation of your support for a three year period, it was determined that your public support percentage for IRC sections 509(a)(1) and 170(b)(1)(A)(vi) status is 0.00 percent. This percentage is below the required 33 1/3 percent necessary to maintain public support status.

**IRC Section 509(a)(2) Support Test:**

Total Sources of Support \$

**Public Support Test:**

Public support \$

Divided by Total Support \$

Public Support Percentage for § 509(a)(2) %

When we computed the public support test for IRC section 509(a)(2) using these same figures, your public support was determined to be 100.00 percent. This met the required percentage necessary in order to maintain public support status for section 509(a)(2). Section 509(a)(2) of the Internal Revenue Code describes organizations that receive no more than one-third of their support from gross investment income and more than one-third of their support from a combination of gifts, grants, contributions, or membership fees from other than a disqualified person, and gross receipts from an activity that is not an unrelated trade or business.

**LAW**

IRC section 501(c)(3) Corporation, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit on any private shareholder or individual, no substantial part of the activities of which is carrying of propaganda, or otherwise provided in subsection (h), and which does not participate in, in intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC section 509(a). For the purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

- 1) an organization described in section 170(b)(1)(A) (Other than clauses (vii) and (viii);
- 2) an organization that normally receives more than one third of its support from contributions membership fees and gross receipts from activities related to charitable, etc functions – subject to certain exceptions, and no more than one third of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975;

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit  1
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- 3) an organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in section 509(a)(1) or (2) or section 501(c)(4), (5), (6), if they meet the test of section 509(a)2); and
- 4) an organization organized and operated for public safety.

Section 170(b)(1)(A)(vi) of the Code describes an organization "which normally receives a substantial part of its support from a governmental unit...or from direct or indirect contributions from the general public."

Income Tax Regulations section 1.170A-9(e)(2) states that an organization is publicly supported if at least 33 1/3 percent of its support is received from grants from governmental units, and direct or indirect support from the general public.

Income Tax Regulations section 1.170A-9(e) states that an organization dependent primarily on gross receipts from related activities will not be considered as satisfying the public support test for purposes of section 509(a)(1) of the Internal Revenue Code.

Section 509(a)(2) of the Internal Revenue Code describes organizations that receive no more than one-third of their support from gross investment income and more than one-third of their support from a combination of gifts, grants, contributions, or membership fees from other than a disqualified person, and gross receipts from an activity that is not an unrelated trade or business.

Income Tax Regulations section 1.170A-9(e)(6)(i) states in part, that in order to meet the 33 1/3 support test, contributions from individuals, corporations or trust are includible in public support only to the extent they do not exceed 2 percent of the organization's total support.

Income Tax Regulations section 1.512(b)-1(g)(1) states that in computing the unrelated business taxable income of an organization described in section 511(a)(2) the deduction from gross income allowed by section 170 (related to charitable contributions and gifts) shall be allowed.

Income Tax Regulations section 1.512(b)-1(g)(3) states that the contribution, whether made by a trust or other exempt organization, must be paid to another organization to be allowed.

Income Tax Regulations section 1.509(a)-3, Broadly, publicly supported organizations,--  
(c) "Normally" --(1) In general --(i) Definition. The support test set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization is "normal" sources of support. An organization will considered as "Normally" receiving one-third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources and not more than one-third of its support from gross investment and unrelated business income for its current taxable year and the taxable immediately succeeding its current

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Name of taxpayer ORG	Tax Identification number EIN	Year/period ended December 31, 20XX

year, if, for the five taxable years immediately proceeding the current taxable year, if it meets those test for such five year period.

## GOVERNMENT'S POSITION

As set forth above, it is the government's position that the public charity status of ORG should be modified from an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC to an organization described in section 509(a)(2). When we computed the public support test the percentage for IRC sections 509(a)(1) and 170(b)(1)(A)(vi) status was percent. This percentage is below the required percent necessary in order to maintain public support status. However, when we computed the public support percentage for IRC section 509(a)(2) status it was percent.

## TAXPAYER'S POSITION

Organization with the modification and signed Form 6018.

## CONCLUSION

Accordingly, based on the facts of this case ORG's foundation status should be modified from an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC to an organization described in section 509(a)(2). Whereas the effective date is the beginning of the fiscal year that ended December 31, 20XX, which was the time we became aware of all relevant facts.